

# **Exhibit 5**

Date of Last Revision: December 13, 2006.

Welcome to Facebook, a social utility that connects you with the people around you. The Facebook service and network (collectively, "Facebook" or "the Service") are operated by Facebook, Inc. and its corporate affiliates (collectively, "us", "we" or "the Company"). By accessing or using our web site at [www.facebook.com](http://www.facebook.com) or the mobile version thereof (together the "Site") or by posting a Share Button on your site, you (the "User") signify that you have read, understand and agree to be bound by these Terms of Use ("Terms of Use" or "Agreement"), whether or not you are a registered member of Facebook. We reserve the right, at our sole discretion, to change, modify, add, or delete portions of these Terms of Use at any time without further notice. If we do this, we will post the changes to these Terms of Use on this page and will indicate at the top of this page the date these terms were last revised. Your continued use of the Service or the Site after any such changes constitutes your acceptance of the new Terms of Use. If you do not agree to abide by these or any future Terms of Use, do not use or access (or continue to use or access) the Service or the Site. It is your responsibility to regularly check the Site to determine if there have been changes to these Terms of Use and to review such changes.

PLEASE READ THESE TERMS OF USE CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES AND OBLIGATIONS. THESE INCLUDE VARIOUS LIMITATIONS AND EXCLUSIONS, AND A DISPUTE RESOLUTION CLAUSE THAT GOVERNS HOW DISPUTES WILL BE RESOLVED.

#### Eligibility

Membership in the Service is void where prohibited. This Site is intended solely for Users who are thirteen (13) years of age or older, and any registration by, use of or access to the Site by anyone under 13 is unauthorized, unlicensed and in violation of these Terms of Use. By using the Service or the Site, you represent and warrant that you are 13 or older and that you agree to and to abide by all of the terms and conditions of this Agreement. The Company may terminate your membership, delete your profile and any content or information that you have posted on the Site and/or prohibit you from using or accessing the Service or the Site (or any portion, aspect or feature of the Service or the Site) for any reason, at any time in its sole discretion, with or without notice, including without limitation if it believes that you are under 13.

#### Registration Data; Account Security

In consideration of your use of the Site, you agree to (a) provide accurate, current and complete information about you as may be prompted by any registration forms on the Site ("Registration Data"); (b) maintain the security of your password and identification; (c) maintain and promptly update the Registration Data, and any other information you provide to Company, to keep it accurate, current and complete; and (d) be fully responsible for all use of your account and for any actions that take place using your account.

#### Proprietary Rights in Site Content; Limited License

All content on the Web site, including but not limited to designs, text, graphics, pictures, video, information, software, music, sound and other files, and their selection and arrangement (the "Site Content"), are the proprietary property of the Company, its Users or its licensors with all rights reserved. No Site Content may be modified, copied, distributed, framed, reproduced, republished, downloaded, displayed, posted, transmitted, or sold in any form or by any means, in whole or in part, without the Company's prior written permission, except that the foregoing does not apply to your own User Content (as defined below) that you legally post on the Site. Provided that you are eligible for use of the Site, you are granted a limited license to access and use the Site and to download or print a copy of any portion of the Site Content solely for your personal, non-commercial use, provided that you keep all copyright or other proprietary notices intact. Except for your own User Content, you may not republish Site Content on any Internet, Intranet or Extranet site or incorporate the information in any other database or compilation, and any other use of the Site Content is strictly prohibited. Such license is subject to these Site Terms and does not include use of any data mining, robots or similar data gathering or extraction methods. Any use of the Site or the Site Content other than as specifically authorized herein, without the prior written permission of Company, is strictly prohibited and will terminate the license granted herein. Such unauthorized use may also violate applicable laws including without limitation copyright and trademark laws and applicable communications regulations and statutes. Unless explicitly stated herein, nothing in these Site Terms shall be construed as conferring any license to intellectual property rights, whether by estoppel, implication or otherwise. This license is revocable at any time without notice and with or without cause.

#### Trademarks

32665, FACEBOOK, THE FACEBOOK, FACEBOOKHIGH, FBOOK, POKE, THE WALL and other Company graphics, logos, designs, page headers, button icons, scripts and service names are registered trademarks, trademarks or trade dress of Company in the U.S. and/or other countries. Company's trademarks and trade dress may not be

used, including as part of trademarks and/or as part of domain names, in connection with any product or service in any manner that is likely to cause confusion and may not be copied, imitated, or used, in whole or in part, without the prior written permission of the Company.

#### User Conduct

You understand that except for self-service advertising programs offered by us on the Site (e.g., Facebook Flyers), the Service and the Site are available for your personal, non-commercial use only. You represent, warrant and agree that no materials of any kind submitted through your account or otherwise posted or shared by you through the Service will violate or infringe upon the rights of any third party, including copyright, trademark, privacy, publicity or other personal or proprietary rights; or contain libelous, defamatory or otherwise unlawful material. You further agree not to harvest or collect email addresses or other contact information of Users from the Service or the Site by electronic or other means for the purposes of sending unsolicited emails or other unsolicited communications. Additionally, you agree not to use automated scripts to collect information from the Service or the Site or for any other purpose. You further agree that you may not use the Service or the Site in any unlawful manner or in any other manner that could damage, disable, overburden or impair the Site. In addition, you agree not to use the Service or the Site to:

- \* upload, post, transmit, share, store or otherwise make available any content that we deem to be harmful, threatening, unlawful, defamatory, infringing, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, invasive of privacy or publicity rights, hateful, or racially, ethnically or otherwise objectionable;

- \* register for more than one User account, register for a User account on behalf of an individual other than yourself, or register for a User account on behalf of any group or entity;

- \* impersonate any person or entity, or falsely state or otherwise misrepresent yourself, your age or your affiliation with any person or entity;

- \* upload, post, transmit, share or otherwise make available any unsolicited or unauthorized advertising, solicitations, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;

- \* upload, post, transmit, share, store or otherwise make publicly available on the Site any private information of any third party, including, without limitation, addresses, phone numbers, email addresses, Social Security numbers and credit card numbers;

- \* solicit personal information from anyone under 18 or solicit passwords or personally identifying information for commercial or unlawful purposes;
- \* upload, post, transmit, share or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- \* intimidate or harass another;
- \* upload, post, transmit, share, store or otherwise make available content that would constitute, encourage or provide instructions for a criminal offense, violate the rights of any party, or that would otherwise create liability or violate any local, state, national or international law;
- \* use or attempt to use another's account, service or system without authorization from the Company, or create a false identity on the Service or the Site.
- \* upload, post, transmit, share, store or otherwise make available content that, in the sole judgment of Company, is objectionable or which restricts or inhibits any other person from using or enjoying the Site, or which may expose Company or its Users to any harm or liability of any type.

#### User Content Posted on the Site

You are solely responsible for the photos, profiles, messages, notes, text, information, music, video, advertisements and other content that you upload, publish or display (hereinafter, "post") on or through the Service or the Site, or transmit to or share with other Users (collectively the "User Content"). You understand and agree that the Company may, but is not obligated to, review and delete or remove (without notice) any User Content in its sole discretion, including without limitation User Content that in the sole judgment of the Company violate this Agreement or which might be offensive, illegal, or that might violate the rights, harm, or threaten the safety of Users or others.

By posting User Content to any part of the Site, you automatically grant, and you represent and warrant that you have the right to grant, to the Company an irrevocable, perpetual, non-exclusive, transferable, fully paid, worldwide license (with the right to sublicense) to use, copy, publicly perform, publicly display, reformat, translate, excerpt (in whole or in part) and distribute such User Content for any purpose on or in connection with the Site or the promotion thereof, to prepare derivative works of, or incorporate into other works, such User Content, and to grant and authorize sublicenses of the foregoing. You may remove your User

Content from the Site at any time. If you choose to remove your User Content, the license granted above will automatically expire.

#### Facebook Mobile Services

The Service includes certain services that are available via your mobile phone, including (i) the ability to upload content to Facebook via your mobile phone (Mobile Uploads), (ii) the ability to receive and reply to Facebook messages, to poke and receive pokes and to write wall posts using text messaging (Mobile Texts) and (iii) the ability to browse Facebook from your mobile phone (Mobile Web) (collectively the "Mobile Services"). We do not charge for these Mobile Services. However, your carrier's normal messaging, data and other rates and fees will still apply. You should check with your carrier to find out what plans are available and how much they cost. By using the Mobile Services, you agree that we may communicate with you regarding Facebook and its partners by SMS, MMS, text message or other electronic means to your mobile device and that certain information about your usage of the Mobile Services may be communicated to us.

#### Copyright Complaints

If you believe that any material on the Site infringes upon any copyright which you own or control, you may send a written notification of such infringement to our Designated Agent as set forth below:

Name of Agent Designated to Receive Notification of Claimed Infringement: Rudy Gadre

Full Address of Designated Agent to Which Notification Should be Sent: 156 University Ave., Suite 300, Palo Alto, CA 94301

Telephone Number of Designated Agent: (650) 543-4800

Facsimile Number of Designated Agent: (650) 543-4801

E-Mail Address of Designated Agent: [copyright@facebook.com](mailto:copyright@facebook.com)

To meet the notice requirements under the Digital Millennium Copyright Act, the notification must be a written communication that includes the following:

A. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;

B. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;

C. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material;

D. Information reasonably sufficient to permit us to contact the complaining party, such as an address, telephone number and, if available, an electronic mail address at which the complaining party may be contacted;

E. A statement that the complaining party has a good-faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law; and

F. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

#### Repeat Infringer Policy

In accordance with the Digital Millennium Copyright Act (DMCA) and other applicable law, Company has adopted a policy of terminating, in appropriate circumstances and at Company's sole discretion, members who are deemed to be repeat infringers. Company may also at its sole discretion limit access to the Site and/or terminate the memberships of any Users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

#### Links to Other Websites and Content

The Site contains (or you may be sent through the Site or the Services) links to other web sites ("Third Party Sites") as well as articles, photographs, text, graphics,

pictures, designs, music, sound, video, information, software and other content belonging to or originating from third parties (the "Third Party Content"). Such Third Party Sites and Third Party Content are not investigated, monitored or checked for accuracy, appropriateness, or completeness by us, and we are not responsible for any Third Party Sites accessed through the Site or any Third Party Content posted on the Site, including without limitation the content, accuracy, offensiveness, opinions, reliability or policies of or contained in the Third Party Sites or the Third Party Content. Inclusion of or linking to any Third Party Site or any Third Party Content does not imply approval or endorsement thereof by us. If you decide to leave the Site and access the Third Party Sites, you do so at your own risk and you should be aware that our terms and policies no longer govern. You should review the applicable terms and policies, including privacy and data gathering practices, of any site to which you navigate from the Site.

#### Share Service

Company offers a feature whereby Users of the Site can share with others or post to their own member profile, videos, articles and other Third Party Content from, and/or links to, Third Party Sites through the Service (the "Share Service"). You acknowledge and agree that your use of the Share Services and all links, User Content or Third Party Content shared through the Share Service is subject to, and will fully comply with the User conduct rules set forth above and the other terms and conditions set forth in these Terms of Use.

#### Use of Share Links by Online Content Providers

Subject to the terms and conditions of these Terms of Use, Third Party Sites that meet the requirements set forth below may place a Share Link (as described below), in the form approved by Company, on pages of their web sites to facilitate use of the Share Service. A Third Party Site that posts a Share Link on its web site is referred to herein as an "Online Content Provider" and shall abide and be subject to the applicable sections of these Terms of Use. A "Share Link" is a button and/or a text link appearing on an Online Content Provider's web page that, upon being clicked by a User, enables us to launch a sharing mechanism through which Users can share with others or post to their own member profile, links and content from that page.

In the event that the Share Link is a button that contains any icons or other graphic images, trademarks or other proprietary materials of Company, Online Content Provider is granted permission to use such images, trademarks or other materials solely for the purpose of placing the Share Link on Online Content Provider's site and solely in the current form provided by the Company. In the event that the Share Link is a text link, it must include the word "Facebook" as part of the link. The rights



granted in this paragraph may be revoked by Company at any time with or without cause in its sole discretion, and upon such termination, Online Content Provider agree to immediately remove all Share Links from its site.

In order for an Online Content Provider to include a Share Link on its pages, the Third Party Site must not contain any web content that if shared or posted by a User would be a violation of the User conduct rules set forth above. Without limiting the foregoing, Online Content Provider agrees not to post a Share Link on any web site that contains, and represents and warrants that such web site does not and will not contain, any content that is infringing, harmful, threatening, unlawful, defamatory, abusive, inflammatory, harassing, vulgar, obscene, lewd, fraudulent, or invasive of privacy or publicity rights or that may expose Company or its Users to any harm or liability of any type. Upon including of a Share Link, Online Content Provider agrees to defend, indemnify and hold Company, its subsidiaries and affiliates, and each of their directors, officers, agents, contractors, partners and employees, harmless from and against any loss, liability, claim, demand, damages, costs and expenses, including reasonable attorney's fees, arising out of or in connection with such Share Link, any links, content or other items or materials which may be shared or posted through such Share Link, or any breach or alleged breach of the foregoing representations and warranties.

By including a Share Link, Online Content Provider automatically grants, and represents and warrants that it has the right to grant, to the Company an irrevocable, perpetual, non-exclusive, transferable, fully paid, worldwide license (with the right to sublicense) to use the Share Service in order to link to, use, copy, publish, stream, publicly perform, publicly display, reformat, translate, excerpt (in whole or in part), summarize, and distribute the content, links and other materials of any kind residing on any web pages on which Online Content Provider places the Share Link.

#### User Disputes

You are solely responsible for your interactions with other Facebook Users. We reserve the right, but have no obligation, to monitor disputes between you and other Users.

#### Privacy

We care about the privacy of our Users. [Click here](#) to view the Site's Privacy Policy. By using the Site or the Service, you are consenting to have your personal data transferred to and processed in the United States.

#### Disclaimers

The Company is not responsible or liable in any manner for any User Content or Third Party Content posted on the Site or in connection with the Service, whether posted or caused by Users of the Site or by any of the equipment or programming associated with or utilized in the Site or the Service. Although we provide rules for User conduct and postings, we do not control and are not responsible for what Users post on the Site and are not responsible for any offensive, inappropriate, obscene, unlawful or otherwise objectionable content you may encounter on the Site or in connection with any User Content or Third Party Content. The Company is not responsible for the conduct, whether online or offline, of any User of the Site or Service.

The Site and the Service may be temporarily unavailable from time to time for maintenance or other reasons. Company assumes no responsibility for any error, omission, interruption, deletion, defect, delay in operation or transmission, communications line failure, theft or destruction or unauthorized access to, or alteration of, User communications. The Company is not responsible for any problems or technical malfunction of any telephone network or lines, computer online systems, servers or providers, computer equipment, software, failure of email or players on account of technical problems or traffic congestion on the Internet or at any Site or combination thereof, including injury or damage to Users or to any other person's computer related to or resulting from participating or downloading materials in connection with the Web and/or in connection with the Service. Under no circumstances will the Company be responsible for any loss or damage, including any loss or damage to any User Content or personal injury or death, resulting from anyone's use of the Site or the Service, any User Content or Third Party Content posted on or through the Site or the Service or transmitted to Users, or any interactions between Users of the Site, whether online or offline.

THE SITE, THE SERVICE AND THE SITE CONTENT ARE PROVIDED "AS-IS" AND THE COMPANY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. THE COMPANY CANNOT GUARANTEE AND DOES NOT PROMISE ANY SPECIFIC RESULTS FROM USE OF THE SITE AND/OR THE SERVICE. COMPANY DOES NOT REPRESENT OR WARRANT THAT CONTENT OR MATERIALS ON THE SITE ARE ACCURATE, COMPLETE, RELIABLE, CURRENT OR

ERROR-FREE OR THAT THE SITE OR ITS SERVERS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THEREFORE, YOU SHOULD EXERCISE CAUTION IN THE USE AND DOWNLOADING OF ANY SUCH CONTENT OR MATERIALS AND USE INDUSTRY-RECOGNIZED SOFTWARE TO DETECT AND DISINFECT VIRUSES.

Company reserves the right to change any and all content contained in the Site and any Services offered through the Site at any time without notice. Reference to any products, services, processes or other information, by trade name, trademark, manufacturer, supplier or otherwise does not constitute or imply endorsement, sponsorship or recommendation thereof, or any affiliation therewith, by Company.

#### Limitation on Liability

EXCEPT IN JURISDICTIONS WHERE SUCH PROVISIONS ARE RESTRICTED, IN NO EVENT WILL COMPANY OR ITS DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE TO YOU OR ANY THIRD PERSON FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING FOR ANY LOST PROFITS OR LOST DATA ARISING FROM YOUR USE OF THE SITE OR THE SERVICE OR ANY OF THE SITE CONTENT OR OTHER MATERIALS ON OR ACCESSED THROUGH THE SITE, EVEN IF THE COMPANY IS AWARE OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE COMPANY'S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO COMPANY FOR THE SERVICE DURING THE TERM OF MEMBERSHIP, BUT IN NO CASE WILL THE COMPANY'S LIABILITY TO YOU EXCEED \$1000. YOU ACKNOWLEDGE THAT IF NO FEES ARE PAID TO COMPANY FOR THE SERVICE, YOU SHALL BE LIMITED TO INJUNCTIVE RELIEF ONLY, UNLESS OTHERWISE PERMITTED BY LAW, AND SHALL NOT BE ENTITLED TO DAMAGES OF ANY KIND FROM COMPANY, REGARDLESS OF THE CAUSE OF ACTION.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

#### Governing Law; Venue and Jurisdiction

By visiting or using the Site and/or the Service, you agree that the laws of the State of Delaware, without regard to principles of conflict of laws, will govern these Terms of Use and any dispute of any sort that might arise between you and the Company or any of our affiliates. With respect to any disputes or claims not subject to arbitration (as set forth below), you agree not to commence or prosecute any action in connection therewith other than in the state and federal courts of California, and you hereby consent to, and waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to, venue and jurisdiction in the state and federal courts of California.

#### Arbitration

YOU AND COMPANY AGREE THAT THE SOLE AND EXCLUSIVE FORUM AND REMEDY FOR ANY AND ALL DISPUTES AND CLAIMS RELATING IN ANY WAY TO OR ARISING OUT OF THESE SITE TERMS, THE SITE AND/OR THE SERVICE (INCLUDING YOUR VISIT TO OR USE OF THE SITE AND/OR THE SERVICE) SHALL BE FINAL AND BINDING ARBITRATION, except that, to the extent that either of us has in any manner infringed upon or violated or threatened to infringe upon or violate the other party's patent, copyright, trademark or trade secret rights, such other party may seek injunctive or other appropriate relief.

Arbitration under this Agreement shall be conducted by the American Arbitration Association (the "AAA") under its Commercial Arbitration Rules and, in the case of consumer disputes, the AAA's Supplementary Procedures for Consumer Related Disputes ( the "AAA Consumer Rules") (collectively the "AAA Rules"). The location of the arbitration and the allocation of costs and fees for such arbitration shall be determined in accordance with such AAA Rules and shall be subject to the limitations provided for in the AAA Consumer Rules (for consumer disputes). If such costs are determined to be excessive in a consumer dispute, the Company will be responsible for paying all arbitration fees and arbitrator compensation in excess of what is deemed reasonable. The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction.

To the fullest extent permitted by applicable law, NO ARBITRATION OR CLAIM UNDER THESE TERMS OF USE SHALL BE JOINED TO ANY OTHER ARBITRATION OR CLAIM, INCLUDING ANY ARBITRATION OR CLAIM INVOLVING ANY OTHER CURRENT OR FORMER USER OF THE SERVICE, AND NO CLASS ARBITRATION PROCEEDINGS SHALL BE PERMITTED. In no event shall any claim, action or proceeding by you related in any way to the Site and/or the Service (including your visit to or use of the Site and/or the Service) be instituted more than three (3) year after the cause of action arose.

## Indemnity

You agree to indemnify and hold the Company, its subsidiaries and affiliates, and each of their directors, officers, agents, contractors, partners and employees, harmless from and against any loss, liability, claim, demand, damages, costs and expenses, including reasonable attorney's fees, arising out of or in connection with any User Content, any Third Party Content you post or share on or through the Site (including without limitation through the Share Service), your use of the Service or the Site, your conduct in connection with the Service or the Site or with other Users of the Service or the Site, or any violation of this Agreement or of any law or the rights of any third party.

## Submissions

You acknowledge and agree that any questions, comments, suggestions, ideas, feedback or other information about the Site or the Service ("Submissions"), provided by you to Company are non-confidential and shall become the sole property of Company. Company shall own exclusive rights, including all intellectual property rights, and shall be entitled to the unrestricted use and dissemination of these Submissions for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

## Other

These Terms of Use constitute the entire agreement between you and Company regarding the use of the Site and/or the Service, superseding any prior agreements between you and Company relating to your use of the Site or the Service. The failure of Company to exercise or enforce any right or provision of these Terms of Use shall not constitute a waiver of such right or provision in that or any other instance. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect. If any provision of these Site Terms shall be deemed unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms of Use and shall not affect the validity and enforceability of any remaining provisions.

## Questions

Please visit our [Help](#) page for more information.